

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Real Estate Broker  
License and Notary Public Commission of  
Steven R. Carver, and the Real Estate  
Company License of Carver & Associates  
Real Estate

*and*

In the Matter of the Summary Suspension of  
the Real Estate Broker License of Steven R.  
Carver and the Real Estate Company  
License of Carver & Associates Real Estate

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

These matters came before Administrative Law Judge Eric L. Lipman for an evidentiary hearing on July 17-19, 2012. Following the receipt of post-hearing submissions, the hearing record closed on August 17, 2012.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (the Department). Evan H. Weiner, Esq., Neve Webb, PLLC, appeared on behalf of Steven R. Carver and Carver & Associates Real Estate (Respondents).

**STATEMENT OF ISSUES**

1. Whether Mr. Carver engaged in fraudulent, deceptive or dishonest practices in connection with the sales of certain homes during 2005?
2. Whether Mr. Carver failed to use reasonable care and breached fiduciary duties that he had toward clients participating in certain sale transactions during 2005?
3. Whether Mr. Carver failed to notify the Department that he had relinquished management duties of Carver & Associates Real Estate?

4. Whether Mr. Carver undertook licensed activities in ways that were incompetent, untrustworthy or financially irresponsible?

5. Whether Mr. Carver acted as a real estate broker or real estate salesperson at a time when he was not licensed to undertake such activities?

Based upon the contents of the hearing record, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. The law regulating the provision of real estate sales and property management services has been re-codified since the transactions in this case occurred. Statutory provisions that regulated real estate activities in 2005 – namely, Minn. Stat. §§ 82.17 through 82.51 – have since been renumbered. Because the substantive elements of the laws that are applicable in this case did not change alongside their re-numbering, for ease of reference, the 2010 version of the statute is cited in the place of the then-applicable 2005 requirements.<sup>1</sup>

#### **The Licensees**

2. On August 29, 2001, the Department issued Steven R. Carver (“Carver”) a real estate salesperson license, No. 20292296.<sup>2</sup>

3. Mr. Carver’s real estate salesperson license remained active until August 28, 2007, when he obtained real estate broker license, No. 40040986. Carver’s real estate broker license remained active until it lapsed on June 30, 2011.<sup>3</sup>

4. On January 26, 2006, Carver was commissioned as a notary public. His commission number was 31009202. This commission remained active until it expired on February 1, 2011.<sup>4</sup>

5. On August 10, 2007, the Department issued Carver & Associates Real Estate (“C&A”) a corporate real estate broker license, No. 40039009. C&A’s license remained active until it lapsed on June 30, 2011.<sup>5</sup>

6. At all times that C&A held its corporate real estate broker license, Mr. Carver was listed as the “primary broker” for C&A.<sup>6</sup>

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<sup>1</sup> See, Chapter 82 (<https://www.revisor.mn.gov/statutes/?id=82>).

<sup>2</sup> Ex. 1.

<sup>3</sup> Ex. 1; Ex. 74 at Response No. 1; Testimony of Matthew Boyer; Testimony of Julie Kosmalski.

<sup>4</sup> Ex. 74 at Response No. 2.

<sup>5</sup> Test. of M. Boyer; Test. of J. Kosmalski; Ex. 74 at Response No. 3.

<sup>6</sup> Ex. 74 at Response No. 26; *see also*, Minn. Stat. § 82.58, subd. 4 (2010).

## **Carver's Business Model and Marketing**

7. Prior to becoming a licensed real estate salesperson, Mr. Carver learned a great deal about the local real estate market – and rental property practice in particular – by observing his father's development of rental properties. The elder Carver began as a real estate investor by purchasing a four-plex unit with some savings that he had accumulated. He lived in one of the units of the four-plex, undertook property management and modest repairs of the other units from his apartment, and within a short time accumulated some "cash flow" beyond his annual expenses for the property. With his profits, Carver's father repeated this process with a second, third and fourth mutli-unit property. Each time, Carver's father actively screened prospective renters, closely supervised conditions at the property he purchased and completed small repairs on his own.<sup>7</sup>

8. Later, in 2005, Steven Carver held himself out as a person who was knowledgeable about the identification and selection of valuable investment properties. In promotional materials to prospective clients, Mr. Carver and his company emphasized their special expertise and experience in spotting worthwhile real estate investment opportunities. They noted:

Carver & Associates have a streamlined system to put investors into rental investment properties that cash flow. They do all the work ahead of time to save the client time, money, and to help avoid the classic mistakes of rental investments.

Mr. Carver's marketing to current and prospective clients argued that Carver's methods reduced the financial risk, and the overall level of effort, needed to make profits in the local real estate market.<sup>8</sup>

9. A key part of Mr. Carver's efforts to obtain new clients was to host seminars that detailed his investment philosophy and property selection techniques to would-be investors. During these presentations, Carver emphasized three key features of his "get rich slowly" business model. Carver argued that investors should: (1) not put any of their own money into the purchase of rental properties, but instead find "no money down" opportunities; (2) select properties whose rental income was greater than their annual expenses; and, (3) hold on to purchased properties while real estate values appreciated, as they had for several decades, at a rate of six percent per year or more.<sup>9</sup>

10. Joining Mr. Carver as a co-presenter at several of these seminars was Richard Garvey. Mr. Garvey was a mortgage broker affiliated with Tri-Minnesota

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<sup>7</sup> Test. of S. Carver.

<sup>8</sup> Ex. 59 at 18.

<sup>9</sup> Test. of S. Carver; Ex. 59 at 3.

Mortgage. During his portions of the seminar, Mr. Garvey would instruct attendees on how they could obtain financing for properties identified through Mr. Carver's methods.<sup>10</sup>

11. During the seminars, and in his marketing to clients, Mr. Carver promoted the work of his property management company, the House of Trades. Carver offered that in return for a "minimal door fee," the House of Trades would undertake all of the property management duties normally associated with being a landlord. In particular, House of Trades would place advertisements to obtain renters; screen potential tenants; collect monthly rental payments; and complete any needed repairs and cleanup at properties that were under management.<sup>11</sup>

12. At his seminars, and thereafter, Mr. Carver offered his clients what appeared to be an integrated set of investment opportunities. Carver and his business affiliates would identify investment properties and, if any client wished to make a purchase, they would also provide the associated real estate closing, mortgage banking and property management services.<sup>12</sup>

13. Following his seminars, and as part of his real estate practice, Mr. Carver identified, graded, and recommended investment properties for his clients to review and purchase. Carver did so by creating spreadsheets of property listings that he distributed each day to his clients. The spreadsheets – which he denominated the "daily lists" – estimated each property's "cash flow" by comparing total costs of the property against the property's capacity for generating rental income.<sup>13</sup>

14. Importantly, however, many of the properties recommended by Mr. Carver only had a positive cash flow if the lowest rates then-available in the market were used – interest rates that were associated with Adjustable Rate Mortgages and "interest-only" mortgages or "negative amortization" loans. If Mr. Carver had assumed that conventional, 30-year mortgages would be used to finance these purchases, many of the properties on his "daily list" would show a "negative cash flow."<sup>14</sup>

15. Further, Mr. Carver's cash flow calculations included some, but not all of the costs associated with purchase and rental of the listed property. For example, notwithstanding Carver's recommendation that clients use short-term financing mechanisms when first obtaining rental properties, his cash flow calculations did not include future closing costs, or likely rates of future interest, associated with any later re-financed loans.<sup>15</sup>

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<sup>10</sup> Test. of S. Carver.

<sup>11</sup> Test. of W. Lemieux; Test. of S. Carver; Test. of J. Kollasch.

<sup>12</sup> Ex. 59.

<sup>13</sup> Ex. 59 at 9 ("Current List").

<sup>14</sup> Ex. 59 at 4 and 9; Ex. 60; Test. of S. Carver.

<sup>15</sup> Ex. 59 at 9.

16. Mr. Carver's cash flow calculations also included a number of investment assumptions, each of which sharply increased the risk to Carver's clients, but were not disclosed as part of the "daily lists." Mr. Carver's calculations assumed that: (a) purchases would be refinanced every few years, as soon as the "best financing" rate expired, and the minimum monthly mortgage payment was due to be increased; (b) each of the units in any purchased properties would be fully-occupied by rent-paying tenants and that any rent would be remitted by those tenants, in full, each month; (c) any rental income that was included by the property seller in the real estate listing, was accurate; and (d) there would be few, if any, expenses associated with the upkeep or maintenance on any rental unit.<sup>16</sup>

17. Mr. Carver's "get rich slow" business model sought to build wealth by renting properties that, in the best of circumstances, appreciated in value and averaged \$100 in proceeds to the owner each month.<sup>17</sup>

18. At the evidentiary hearing, Mr. Carver conceded that if any one of a number of events happened – such as rental units being vacant, tenants failing to pay rent in a timely fashion, tenants damaging the rental units, or an increase in interest rates – the added costs of renting the property could quickly outstrip the hoped-for average of \$100 in proceeds each month.<sup>18</sup>

### **Significant Features of the Transactions at Issue**

19. In his capacity as a buyer agent, Mr. Carver represented William and Tamara Lemieux, Joseph Kollasch, and James Hassing, respectively, in their purchase of 19 investment properties in 2005. Mr. Carver's colleague, Richard Garvey, of Tri-Minnesota Mortgage, originated all the mortgage loans obtained from financial institutions on these transactions.<sup>19</sup>

20. The Lemieuxs and Messrs. Kollasch and Hassing knew very little about investing in real estate. Before their association with Messrs. Carver and Garvey, Mr. Lemieux had once owned a small rental property and Messrs. Kollasch and Hassing had never purchased rental property of any kind. Their lack of experience in real estate investing was known to Mr. Carver in 2005 and he likewise knew that these clients relied heavily upon his expertise and recommendations when they purchased real estate.<sup>20</sup>

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<sup>16</sup> Ex. 59 at 4 and 9; Test. of S. Carver; Testimony of William Lemieux.

<sup>17</sup> Ex. 59 at 3; Test. of S. Carver.

<sup>18</sup> Test. of S. Carver.

<sup>19</sup> Test. of M. Boyer; Test. of S. Carver; Test. of W. Lemieux; Testimony of Joseph Kollasch; Testimony of James Hassing.

<sup>20</sup> Test. of M. Boyer; Test. of S. Carver; Test. of W. Lemieux; Test. of J. Kollasch; Test. of J. Hassing.

21. A key part of the “no money down” feature of the transactions was that Mr. Carver and his affiliates would obtain an overly-optimistic appraisal of the property’s value – an appraisal that overstated the actual, true market price at which a willing seller would sell the parcel and a willing buyer would purchase the property. The gap between the true value of an arms-length transaction, and the higher “market value” reflected in the appraisals, would be converted into a “seller financed” mortgage. The cash proceeds from this mortgage would then be lent to the buyer at the closing.<sup>21</sup>

22. In 16 of the 19 transactions at issue, Carver facilitated this kind of “seller financing.”<sup>22</sup>

23. As a result of these arrangements, at the closing, the seller of the property would receive, in cash, a fair market price for the sale of the property; the buyer would obtain amounts that were sufficient to cover the “down payment” on the property; and the lender would, unbeknownst to it, underwrite a first mortgage that was in excess of the true market value of the parcel, with some of those proceeds reverting back to the buyer so that the buyer could to make the down payment.<sup>23</sup>

24. Indeed, one strong indication that the seller-financed second mortgages were illusory is that some of the balloon notes were immediately forgiven by the seller and the funds never repaid by the buyer. Thus, the sellers in these transactions fully realized their expectations from the part of the sale that was not “seller financed.”<sup>24</sup>

25. To avoid fraud upon mortgage lenders and insurers, the terms of seller carry-back loans must be disclosed in advance of the transaction. Carry back loans are material to the overall loan-to-value ratio of the property and the buyer’s ability to repay other mortgage loans secured by the property.<sup>25</sup>

26. Federal law requires that the “actual charges paid by the borrower and seller” be set forth “on the HUD--1, or by the borrower on the HUD--1A.” Each “third party charge paid by the borrower and seller” is to be separately itemized.<sup>26</sup>

27. Mr. Carver was not licensed to originate the “seller-financed” second mortgages and none of these transactions were referenced on the HUD-1 Settlement Statements relating to the purchase of the properties.<sup>27</sup>

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<sup>21</sup> See *generally*, Exs. 9 and 33.

<sup>22</sup> Ex. 61; Test. of M. Boyer.

<sup>23</sup> *Id.*

<sup>24</sup> Ex. 61; Test. of M. Boyer; Test. of S. Carver.

<sup>25</sup> Test. of M. Boyer; Test. of J. Kosmalski; Test. of S. Carver; 12 U.S.C. § 2603; 24 C.F.R. § 3500.8.

<sup>26</sup> 24 C.F.R. § 3500.8.

<sup>27</sup> Test. of M. Boyer; see *also*, Ex. 61.

28. Mr. Carver acknowledges that real estate salespersons and brokers have a legal duty to ensure that the HUD-1 settlement statements for transactions in which they are involved accurately state the money that the buyer remits to the seller as part of the transaction.<sup>28</sup>

### **The Lemieux Purchases**

29. Carver acted as the buyer's agent for William and Tamara Lemieux in the purchase of six investment properties. In each of the transactions the Lemieuxs received cash from the seller as part of the transaction. The amount of cash received at the closings ranged between \$22,000 and \$38,000.<sup>29</sup>

30. The Lemieuxs were not actively involved in negotiating purchase prices of the properties obtained with Mr. Carver's assistance. In fact, they had signed several purchase agreements in blank, with the expectation that Mr. Carver would complete these agreements once he had found properties for the couple to purchase.<sup>30</sup>

31. The Lemieuxs would not be able to purchase rental properties if they were required to make, from their own resources, the down payments typically required by lenders. The Lemieuxs were only able to undertake "no money down" transactions.<sup>31</sup>

### **990 Burr Avenue**

32. The sellers of 990 Burr Avenue advertised the sales price of the property in the newspaper for \$219,000, which is the price they believed was the fair market value of the property. Mr. Carver did not communicate the \$219,000 asking price to the Lemieuxs and, instead, on or about May 4, 2005, arranged for the Lemieuxs to sign a purchase agreement for 990 Burr Avenue in the amount of \$279,000. The sellers accepted the Lemieuxs' offer on May 9, 2005, at which time the parties had a legally binding contract.<sup>32</sup>

33. Terms included in the addendum to the 990 Burr Avenue purchase agreement negotiated by Carver provided that the seller would give \$10,000 in cash to the Lemieuxs at the closing, that the seller would carryback an additional ten percent of the purchase price in a "proceeds check to be endorsed to buyer upon successful

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<sup>28</sup> Test. of S. Carver; see *also*, Minn. Stat. § 82.48, subd. 3 (b) (2010) ("Brokers shall be responsible for the preparation, custody, safety, and accuracy of all real estate contracts, documents, and records, even though another person may be assigned these duties by the broker"); Minn. Stat. § 82.67, subd. 3 (III) (2) (2010) ("The broker must disclose to the Buyer material facts as defined in Minnesota Statutes, section 82.68, subdivision 3, of which the broker is aware that could adversely and significantly affect the Buyer's use or enjoyment of the property").

<sup>29</sup> See, Exs. 16 – 20.

<sup>30</sup> Test. of W. Lemieux.

<sup>31</sup> Compare, Test. of W. Lemieux with Ex. 74 at Supp. Response No. 6.

<sup>32</sup> Ex. 5; Testimony of Beth Herzog; Test. of W. Lemieux; Test. of S. Carver.

closing of transaction,” and that “seller carryback is to be forgiven immediately upon closing.” The net result of this addendum was that the sellers agreed to provide to the Lemieuxs \$37,900 from the proceeds of the new mortgage on the property.<sup>33</sup>

34. This addendum, however, was not provided by Messrs. Carver or Garvey to the Lemieuxs’ lender.<sup>34</sup>

35. On May 19, 2005, Mr. Carver received an appraisal valuing the property at 990 Burr Avenue at \$286,000. Upon receipt of this appraisal, Mr. Carver amended the purchase agreement, in favor of the sellers and his own sales commission, by upwardly adjusting the price in the purchase agreement to \$286,000.<sup>35</sup>

36. This increase in the sales price was implemented without the consent of seller or the Lemieuxs in advance of the closing.<sup>36</sup>

37. This change in the purchase price prompted a dispute at the May 27, 2005 closing, with, remarkably enough, the sellers expressing disapproval over the undisclosed increase in the purchase price.<sup>37</sup>

38. In conjunction with the May 27, 2005, closing for 990 Burr Avenue, the closer issued a \$38,600 check made payable to the seller, which the seller was supposed to endorse and returned to the Lemieuxs. This sum reflected 10% of the \$286,000 purchase price – \$28,600 – plus the \$10,000 referenced in the addendum to the purchase agreement. The seller objected to signing over the \$38,600 check and, on June 7, 2005, the closer issued a substitute \$38,600 check directly to the Lemieuxs.<sup>38</sup>

39. The \$38,600 payment to the Lemieuxs did not appear on the HUD-1 for this transaction. The HUD-1 incorrectly reported that the Lemieuxs paid \$29,250.18 of their own money as part of this transaction.<sup>39</sup>

40. The seller carry back was immediately forgiven pursuant to a mutual release agreement. Thus, the Lemieuxs obtained \$38,600 from their own lender to purchase the property.<sup>40</sup>

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<sup>33</sup> Ex. 25 at 000483; Ex. 501; Test. of M. Boyer.

<sup>34</sup> *Id.*

<sup>35</sup> Exs. 500 and 502.

<sup>36</sup> Test. of B. Herzog

<sup>37</sup> Test. of B. Herzog; Test. of W. Lemieux; Test. of S. Carver.

<sup>38</sup> Ex. 11 at 8 (\$38,600 check made payable to Signature Renovations, LLC); Ex. 25 at DOC000726.

<sup>39</sup> Ex. 11; see *also*, Ex. 68; Test. of M. Boyer.

<sup>40</sup> Ex. 501; Test. of M. Boyer.



41. Following the Lemieuxs' default of their mortgage loan on the 990 Burr Avenue property, the private mortgage insurance company undertook a review appraisal of the property. The review appraisal concluded that the true value of the 990 Burr Avenue in May 2005 was \$195,000. Additionally, due to a number of improprieties with this transaction, the insurer canceled the policy it had issued.<sup>41</sup>

### **1094 Bush Avenue**

42. In May of 2005, Susan Woodruff, the owner of 1094 Bush Avenue, was contacted by Michael Province about selling her property. Michael Province was a business associate of Mr. Carver. At the time that she was contacted by Mr. Province, Ms. Woodruff estimates that the Bush Avenue property was worth approximately \$215,000.<sup>42</sup>

43. Woodruff agreed to sell 1094 Bush Avenue to the Lemieuxs for \$276,000. Carver facilitated a transaction in which the Lemieuxs received \$37,600 of their lender's mortgage loan proceeds. Woodruff endorsed proceeds checks that were made payable to her in the amount of \$27,600 and \$10,000, over to the Lemieuxs, in exchange for a \$27,600 mortgage and balloon note in favor of her. Carver drafted the mortgage and balloon note.<sup>43</sup>

44. At the evidentiary hearing, Ms. Woodruff testified that the \$276,000 purchase price was "ridiculously high." She asserted that she never expected to receive payments on the balloon note from the Lemieuxs because she thought it was too much money for the property and believed the transaction to be "too good to be true."<sup>44</sup>

45. The \$37,600 payment to the Lemieuxs out of the closing proceeds did not appear on the HUD-1. The statement incorrectly reported that the Lemieuxs were paying \$27,218.96 of their own money to fund the transaction.<sup>45</sup>

### **Other Transactions**

46. Prior to purchasing the homes on Burr Avenue and Bush Avenue, the Lemieuxs had purchased four other properties in transactions facilitated by Mr. Carver: 587 Reaney Avenue; 7166 Jorgenson Lane South; 6125 - 10th Street North; and 656 - 35th Street West. In each instance, Mr. Lemieux followed Mr. Carver's instructions as to how much money he should withdraw from his line of credit to bring to the closing. At

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<sup>41</sup> Ex. 22.

<sup>42</sup> Testimony of Susan Woodruff; Test. of W. Lemieux.

<sup>43</sup> Test. of W. Lemieux; Ex. 12 at DOC000558, 0000567; Test. of S. Woodruff; Ex. 20; Ex. 27; Ex. 505.

<sup>44</sup> Test. of S. Woodruff.

<sup>45</sup> Ex. 12 at DOC000071.

each closing, Mr. Lemieux received cash proceeds that he used to immediately repay the withdrawals from his line of credit.<sup>46</sup>

47. The payments made to the Lemieuxs in the transactions for 587 Reaney Avenue, 7166 Jorgenson Lane South, 6125 - 10th Street North, and 656 - 35th Street West did not appear on the HUD-1 statements. The statements incorrectly reported that the Lemieuxs were paying substantial amounts of their own money as down payments in the transactions.<sup>47</sup>

48. So as to permit the Lemieuxs to receive lender approvals and loans to purchase these properties, Mr. Carver conspired with Richard Garvey to submit incomplete and inaccurate loan applications to lenders. The loan applications submitted to lenders involving the Lemieuxs' purchases did not disclose the existence of the seller financing arrangements.<sup>48</sup>

49. Within 6 months of the closing dates of these transactions, the Lemieuxs could not afford the monthly mortgage payments associated with the purchased properties. Tenants had moved out of the properties and were in arrears on their rental payments. These potential, and predictable risks, were not accounted for in Mr. Carver's cash flow analyses.<sup>49</sup>

50. The Lemieuxs retained counsel to evaluate their legal rights and remedies. In an effort to avoid litigation with the Lemieuxs, in May of 2006, Messrs. Carver and Garvey partnered with Mr. Lemieux to form a new entity – CGL Enterprises ("CGL"). Carver and Garvey put additional capital into the joint venture, for the purpose of making needed repairs to the properties, in the hopes that the parcels could be sold to others.<sup>50</sup>

51. The Lemieuxs also attempted to sell the properties through other real estate agents. The Lemieuxs could not sell these properties at a price at which they could recover their investments, because the mortgage indebtedness for each property was between \$40,000 and \$60,000 more than its fair market value.<sup>51</sup>

52. Because the Lemieuxs did not have sufficient income or other funds to pay the mortgages, all six properties fell into foreclosure. Each of the properties was later sold in a "short sale" transaction, resulting in significant losses to the lenders.

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<sup>46</sup> Test. of W. Lemieux; Exs. 16 - 18.

<sup>47</sup> Exs. 10, 13 - 15.

<sup>48</sup> Test. of M. Boyer. The Department has since revoked Garvey's licenses, barred him from the residential mortgage origination industry, and imposed a \$20,000 civil penalty for his role in these transactions. Ex. 69.

<sup>49</sup> Test. of W. Lemieux.

<sup>50</sup> Test. of W. Lemieux; Test. of S. Carver; Ex. 90; Ex. 507.

<sup>51</sup> Ex. 9; Test. of W. Lemieux.

PROPERTY ADDRESS:	SALE DATE: <sup>52</sup>	SALE PRICE: <sup>53</sup>	LOANS TAKEN ON PROPERTY:	AMOUNT OF THE LOAN PROCEEDS TO THE LEMIEUXS:	CARVER'S COMMISSION:	LOSS TO LENDER:
587 Reaney Avenue St. Paul, MN	4/13/05	\$310,000	\$279,000	Approximately \$36,536	\$9,566.00	\$230,100
7166 Jorgenson Ln. S. Cottage Grove, MN	4/18/05	\$194,000	\$174,406	\$24,226.44	\$3,681.00	\$34,406
6125 10th St. N. Oakdale, MN	4/27/05	\$283,000	\$254,700	\$30,883.13	\$6,036.39	\$109,700
656 35th St. W. Hastings, MN	5/20/05	\$194,400	\$174,600	\$24,168.09	\$5,205.08	\$47,700
990 Burr Avenue St. Paul, MN	5/27/05	\$286,000	\$257,500	\$38,600	\$8,508.50	\$177,400
1094 Bush Avenue St. Paul, MN	6/29/05	\$276,000	\$248,400	\$37,600	\$8,211.00	\$215,400
<b>TOTAL</b>			<u>\$1,543,400</u> <sup>54</sup>	<u>\$192,013.66</u> <sup>55</sup>	<u>\$41,207.97</u> <sup>56</sup>	<u>\$814,706</u> <sup>57</sup>

53. In September of 2006, CGL dissolved.<sup>58</sup>

54. In November of 2006, the Lemieuxs filed a petition in bankruptcy, seeking a discharge of their debts from the federal court.<sup>59</sup>

### The Kollasch Purchases

55. In September of 2005, Mr. Carver acted as the buyer's agent for Joseph Kollasch.<sup>60</sup>

<sup>52</sup> Exs. 10 - 15 (HUD-1s).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at Line 202 of each of the various HUD-1s; Ex. 9.

<sup>55</sup> Exs. 16 - 20; Test. of W. Lemieux listed in Exs. 10 - 15.

<sup>56</sup> Ex. 21; Test. of M. Boyer.

<sup>57</sup> Ex. 23; Test. of M. Boyer. This estimate was calculated by subtracting the subsequent sale from the loan amount on the property, and does not include foreclosure costs incurred by the lender, tax or compliance costs, or increases in principal balance due to the use of negative amortization loans.

<sup>58</sup> Ex. 9; Test. of W. Lemieux.

<sup>59</sup> *Id.*

<sup>60</sup> Test. of J. Kollasch.

56. Mr. Kollasch was referred to Steven Carver by Richard Garvey. Mr. Kollasch had previously purchased a rental property with a mortgage obtained through Mr. Garvey's firm, Tri-Minnesota. In talks with Mr. Kollasch, Garvey described Carver as a "carry back specialist."<sup>61</sup>

57. Mr. Carver advised Kollasch that a series of eight investment properties from the same seller, Peter Bazil, were undervalued and could be obtained as part of single set of related transactions.<sup>62</sup>

58. Because Kollasch did not have the funds to make down payments toward the purchase of the properties, Mr. Carver arranged a series of purchase prices and carry-back loans. Bazil agreed to lend Kollasch the funds needed for the down payments from the mortgage loan proceeds that Kollasch's lender would provide for each transaction. These loans from Bazil to Kollasch were facilitated by Mr. Carver and memorialized in a series of promissory notes and mortgages. Thus, these carry-back transactions resulted in Kollasch borrowing the same funds twice – once from his lender and then a second time from Mr. Bazil.<sup>63</sup>

59. After a sale agreement was reached between Carver and Bazil, the purchase transaction nearly fell through. This is because the House of Trades initially declined to provide property management services to the units. The House of Trades did not want to undertake property management services on any properties in North Minneapolis. Without a property management company to manage the units, however, Mr. Kollasch was not interested in making the purchase.<sup>64</sup>

60. To avoid Mr. Kollasch's withdrawal from the transaction, Carver and Garvey prevailed upon the House of Trades, a company that they owned, to agree to manage the properties.<sup>65</sup>

61. The carry back loans between Messrs. Bazil and Kollasch did not appear on the HUD-1 statements for the sale transactions and were not otherwise disclosed to Mr. Kollasch's lenders. Moreover, the HUD-1 statements incorrectly reported that Mr. Kollasch was paying approximately ten percent of the purchase price in each of the eight transactions.<sup>66</sup>

62. When undertaking these transactions, Mr. Kollasch was aware that the documentation completed at the closing was intended by Carver and Garvey to mislead his lenders; making it appear that Kollasch had invested substantial amounts of his own

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<sup>61</sup> *Id.* Test. of S. Carver.

<sup>62</sup> Test. of J. Kollasch.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Test. of J. Kollasch; Exs. 49 - 56.

money in the transactions. Messrs. Carver and Garvey advised Mr. Kollasch that the lenders should not be told about the carry-back loans.<sup>67</sup>

63. Mr. Carver received commissions totaling \$70,494 from Mr. Kollasch's purchase of the eight properties.<sup>68</sup>

64. All of the properties purchased by Mr. Kollasch from Mr. Basil fell into foreclosure, were sold in a short sale, or were otherwise not paid in accordance with the original loan terms. The resulting losses to the lenders were approximately \$1,845,581.<sup>69</sup>

65. Mr. Carver participated in a scheme that obscured material facts and prevented these lenders from making informed decisions as to the true nature of the eight transactions and the use of mortgage loans totaling \$2,301,641.73.<sup>70</sup>

66. Because Mr. Kollasch did not have sufficient income, or other resources to satisfy the mortgages, he later filed a petition in bankruptcy, seeking a discharge of his debts from the federal court.<sup>71</sup>

### **The Hassing Purchases**

67. Mr. Carver acted as the buyer's agent for James Hassing with respect to Hassing's purchase of five investment properties. Like Mr. Kollasch, Mr. Hassing was referred to Mr. Carver by Richard Garvey.<sup>72</sup>

68. Mr. Carver provided Hassing with his spreadsheet listing various investment properties. Mr. Hassing purchased properties that, according to the listing, would either break even or produce an extra \$100 a month in proceeds.<sup>73</sup>

69. Mr. Hassing took out multiple interest-only mortgage loans to purchase the properties, putting none of his own money into the venture for down payments.<sup>74</sup>

70. Mr. Carver urged Mr. Hassing to complete the closings for the purchases within 30 days so as to avoid the purchases appearing on Hassing's credit report. Mr.

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<sup>67</sup> Exs. 41 – 48; Test. of J. Kollasch.

<sup>68</sup> Ex. 57 (Carver's commission checks for Kollasch's transactions).

<sup>69</sup> Test. of J. Kollasch; Test. of M. Boyer; *compare* Exs. 49-56 (HUD-1s listing amounts funded by lenders) *with* Ex. 58 (Certificates of Real Estate Value listing next sale of the properties following foreclosure).

<sup>70</sup> Exs. 49 - 56; Test. of M. Boyer; Test. of J. Kollasch.

<sup>71</sup> Test. of J. Kollasch.

<sup>72</sup> Test. of S. Carver; *see also*, Exs. 28 - 32.

<sup>73</sup> Test. of J. Hassing; Test. of S. Carver.

<sup>74</sup> Test. of J. Hassing.

Carver assured Hassing that avoiding such detection was “how things are done” in the real estate industry.<sup>75</sup>

71. Two of the five transactions included carry backs and balloon notes negotiated by Mr. Carver. Under these notes, the seller loaned Mr. Hassing amounts for the down payment – amounts that the seller would take from mortgage loan proceeds provided by Hassing’s lender.<sup>76</sup>

72. Mr. Hassing would not have been able to undertake the purchase of these two properties but for the “carry back” loans. Hassing did not have sufficient funds to make the required down payments.<sup>77</sup>

73. The cash back payments to Hassing did not appear on the HUD-1 statements associated with these transactions. The statements incorrectly reported that Hassing was paying substantial amounts of his own money as a down payment.<sup>78</sup>

74. Mr. Carver received commissions totaling \$69,455.48 on Hassing’s purchase of the five properties.<sup>79</sup>

75. Mr. Hassing later received letters from his mortgagee, Countryside, indicating that his adjustable rate mortgages would be reset and that the new payments would significantly increase – Hassing beyond the rental income realized by the properties.<sup>80</sup>

76. All of the properties purchased by Mr. Hassing fell into foreclosure, were sold in a short sale, or were otherwise not paid in accordance with the original loan terms. The resulting losses to the lenders were approximately \$603,000.<sup>81</sup>

77. Mr. Carver participated in a scheme that obscured material facts and prevented these lenders from making informed decisions as to the true nature of the five transactions and the use of mortgage loans totaling \$2,219,100.61.<sup>82</sup>

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<sup>75</sup> Ex. 33 at DOC00696; Test. of J. Hassing.

<sup>76</sup> Test. of J. Hassing; Exs. 34 - 35; Ex. 91.

<sup>77</sup> Ex. 33.

<sup>78</sup> Exs. 34 - 38.

<sup>79</sup> Ex. 39.

<sup>80</sup> Ex. 33 at DOC000697.

<sup>81</sup> Compare Exs. 34-38 at Lines 202 and 204 with Ex. 40 (Certificates of Real Estate Value); Test. of M. Boyer.

<sup>82</sup> Ex. 33 at DOC00696; Exs. 34 - 8 at Lines 202 and 204; Test. of M. Boyer; Test. of J. Hassing.

78. Because Mr. Hassing did not have sufficient income, or other resources to satisfy the mortgages, he later filed a petition in bankruptcy, seeking a discharge of their debts from the federal court.<sup>83</sup>

### **Civil Judgments Against Mr. Carver**

79. On May 8, 2008, Mildred and Charles Ford obtained a \$34,156.88 judgment against Mr. Carver in Hennepin County District Court. The judgment followed from Mr. Carver's failure to pay a \$32,000 promissory note that he made to the Fords as part of a real estate transaction. Mr. Carver has since lost his ownership interest in this property following a foreclosure. Mr. Carver has not satisfied the Fords' judgment.<sup>84</sup>

80. On June 30, 2008, Goldstar Mortgage Company ("Goldstar") obtained an \$86,774.31 judgment against Carver in Anoka County District Court. This judgment followed from Mr. Carver's failure to repay monies that Goldstar loaned him on another investment property. Carver has since lost this property in foreclosure. To date, Carver has failed to satisfy Goldstar's judgment.<sup>85</sup>

81. On May 19, 2009, Waters Edge Manors Home Association and HOA Financial Services obtained a \$1,441.15 judgment against Mr. Carver in Anoka County District Court. This judgment relates to unpaid homeowner's association fees on a property that Mr. Carver lost following a foreclosure. To date, Carver has failed to satisfy this judgment.<sup>86</sup>

82. On March 23, 2010, Kimberly Larson obtained a \$1,300 judgment against Carver in Dakota County Conciliation Court. To date, Carver has failed to satisfy Larson's judgment.<sup>87</sup>

### **Respondents' Real Estate Activities in 2011**

83. In the summer and autumn of 2011, Mr. Carver acted as a real estate salesperson in a transaction for the purchase of 1060 Rhode Island Avenue South, Golden Valley, Minnesota. The purchase agreement for this home is dated July 17, 2011, and the transaction closed on November 27, 2011. Respondents were paid a \$4,050 commission for their services relating to the transaction.<sup>88</sup>

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<sup>83</sup> Test. of J. Hassing.

<sup>84</sup> Test. of S. Carver; Ex. 62; Ex. 63; Ex. 74 at Response No. 22.

<sup>85</sup> Test. of S. Carver; Ex. 62; Ex. 74 at Response No. 23.

<sup>86</sup> Test. of S. Carver; Ex. 62; Ex. 74 at Response No. 24.

<sup>87</sup> Ex. 62; Ex. 74 at Response No. 25; Test. of S. Carver.

<sup>88</sup> Exs. 75, 78 and 88; Test. of J. Kosmalski; Test. of S. Carver.

84. Respondents served as the listing agents for a property located at 220 Marshall Avenue, St. Paul, Minnesota. This property was listed for sale between September 23 and November 8, 2011.<sup>89</sup>

85. Acting as a real estate broker or real estate salesperson in Minnesota are activities that require a license.<sup>90</sup>

86. The real estate brokers licenses held by Mr. Carver and Carver & Associates lapsed on June 30, 2011.<sup>91</sup>

87. Respondents were unlicensed from July 1, 2011 until April 11, 2012.<sup>92</sup>

### **Respondents' Real Estate Activities in 2012**

88. On February 28, 2012, Respondents submitted an application to the Department for C&A to obtain a limited broker license.<sup>93</sup>

89. Mr. Carver later notified the Department that Respondents applied for a limited broker license in error. Mr. Carver and C&A had intended to apply for a real estate company license.<sup>94</sup>

90. Thereafter, the Department canceled C&A's limited broker license and provided a refund for the application fee.<sup>95</sup>

91. On March 27, 2012, Carver submitted an application to the Department to reactivate his real estate broker license. That same day, Respondents applied for C&A to obtain a real estate company license.<sup>96</sup>

92. On April 11, 2012, the Department reinstated Carver's real estate broker license, No. 40040986, and issued C&A a new real estate company license, No. 40286797.<sup>97</sup>

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<sup>89</sup> Ex. 87; Test. of J. Kosmalski; Test. of S. Carver

<sup>90</sup> See, Minn. Stat. § 82.55, subd. 19(a) (2010) ("Real estate broker' or 'broker' means any person who . . . for another and for commission, fees, or other valuable consideration . . . sells, exchanges, buyer or rents, manages, or offers or attempts to negotiate a sale, option, exchange, purchase or rental of an interest or estate in real estate, or advertises or holds out as engaged in these activities."); Minn. Stat. § 82.81 (2010) ("No person shall act as a real estate broker or real estate salesperson unless licensed as provided by this section").

<sup>91</sup> Test. of J. Kosmalski.

<sup>92</sup> *Id.*

<sup>93</sup> Ex. 84.

<sup>94</sup> Test. of J. Kosmalski.

<sup>95</sup> *Id.*

<sup>96</sup> Exs. 85 - 86; Test. of J. Kosmalski.



93. Mr. Carver acknowledged that he permitted two unlicensed individuals, Todd Wanka and Kim Rick, to run C&A as a property management company.<sup>98</sup>

94. Mr. Carver has offered different accounts, at different times, as to the amount of supervision that he provided to Mr. Wanka and Ms. Rick. On some occasions, he disclaimed knowledge and oversight of Wanka's and Rick's activities; at other times he suggested that he monitored their work.<sup>99</sup>

95. Between June 6 and July 28, 2012, C&A acted as the property manager for a property located at 1556 Western Avenue North, St. Paul, Minnesota. C&A's agreement with the property owners included finding tenants, collecting rents and repairing the premises.<sup>100</sup>

96. Acting as a property manager in Minnesota is an activity that requires a license.<sup>101</sup>

97. Effective June 27, 2012, the Department summarily suspended Respondents' licenses pending the final determination of this action.<sup>102</sup>

### **The Accuracy and Completeness of Mr. Carver's License Applications**

98. On January 13, 2012, the Department commenced formal administrative action against Respondents by issuing the Notice and Order for a Pre-Hearing Conference.<sup>103</sup>

99. The February 28, 2012, license application contained false and misleading statements. Specifically, Respondents answered "no" to the application question that asked if C&A was involved in an administrative proceeding regarding any professional or occupational licenses.<sup>104</sup>

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<sup>97</sup> *Id.*

<sup>98</sup> Ex. 73 at Track 1; Test. of S. Carver; Test. of M. Boyer; Test. of J. Kosmalski.

<sup>99</sup> Ex. 73 at Track 1; Test. of M. Boyer; Test. of J. Kosmalski; *see also*, Exs. 83 and 89.

<sup>100</sup> Exs. 79 through 83 and 89.

<sup>101</sup> *See*, Minn. Stat. § 82.55, subd. 19 (a) (2010) ("Real estate broker' or 'broker' means any person who . . . for another and for commission, fees, or other valuable consideration . . . rents, manages, or offers . . . rental of an interest or estate in real estate, or advertises or holds out as engaged in these activities").

<sup>102</sup> Test. of J. Kosmalski.

<sup>103</sup> *Notice and Order for Prehearing Conference*, OAH Docket No. 8-1005-22493-2 (January 13, 2012).

<sup>104</sup> Exs. 85 - 86; Test. of J. Kosmalski.

100. The Department would not have issued the Limited Broker License, No. 40283626 had Respondents provided accurate and truthful information on the license application.<sup>105</sup>

101. Respondents' March 27, 2012, applications likewise contained false and misleading statements. Specifically, Respondents failed to disclose that they were named in a pending administrative proceeding and Mr. Carver failed to disclose numerous lawsuits and judgments against him. The Department would not have issued these licenses had the Respondents provided accurate and truthful information on their applications.<sup>106</sup>

102. At the evidentiary hearing, Mr. Carver conceded that he provided false and misleading information to the Department on the three license applications.<sup>107</sup>

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondents under Minn. Stat. §§ 14.50, 45.027, subd. 7 and 11, 82.86, and 359.12 (2010).

2. Respondents received proper and timely notice of the charges against them and of the time and place of proceedings.

3. The burden of proof in this proceeding is on the Department to show by a preponderance of the evidence that Respondents committed the allegations of violations.<sup>108</sup>

4. The Department proved by a preponderance of the evidence that Mr. Carver engaged in fraudulent, deceptive or dishonest practices with respect to obtaining mortgage loans for residential properties.<sup>109</sup>

5. Mr. Carver's misconduct prevented lenders from making informed credit decisions before they issued more than \$6 million in residential mortgage loans.

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Test. of S. Carver.

<sup>108</sup> Minn. Rule 1400.7300, subp. 5 (2011).

<sup>109</sup> Minn. Stat. §§ 45.027, subd. 7(a)(4), 58.12, subd. 1(b)(2)(i), (iv) and (v), 58.13, subd. 1(9), 82.81, subd. 12(b)(9) and (10), 82.82 subd. 1(b), (f), and (h), and 359.12 (2010).

6. The Department proved by a preponderance of the evidence that Mr. Carver breached fiduciary duties owed to the Lemieuxs, Kollasch, and Hassing by not acting in their best interest and by failing to use reasonable care in performing his duties as a real estate agent.<sup>110</sup>

7. The Department proved by a preponderance of the evidence that Mr. Carver failed to notify the Commissioner that he ceased to act as the broker for C&A, failed to maintain C&A's trust account, and failed to provide any supervision over C&A's agents.<sup>111</sup>

8. The Department proved by a preponderance of the evidence that C&A engaged in the business of real estate without having at least one responsible person individually licensed as a broker acting on its behalf, failed to notify the Commissioner of a change of information contained in its license application, and allowed unauthorized individuals to exercise control over its trust account(s).<sup>112</sup>

9. The Department proved by a preponderance of the evidence that Mr. Carver provided false and misleading information during its investigation. Mr. Carver engaged in deceptive and dishonest acts.<sup>113</sup>

10. The Department proved by a preponderance of the evidence that Carver failed to satisfy or otherwise appeal multiple civil judgments obtained against him. Carver has demonstrated untrustworthiness and financial irresponsibility.<sup>114</sup>

11. The Department proved by a preponderance of the evidence that Respondents made material misrepresentations in three distinct applications for licensure. Respondents filed applications for licensure which were incomplete and contained statements that were false and misleading. Respondents engaged in fraudulent, deceptive and dishonest practices.<sup>115</sup>

12. The Department proved by a preponderance of the evidence that Respondents acted as real estate brokers or real estate salespersons without a license and while their licenses were inactive.<sup>116</sup>

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<sup>110</sup> Minn. Stat. §§ 45.027, subd. 7(a)(2), 82.67, subd. 3(III)(2), 82.82, subd. 1(e), and 359.12 (2010).

<sup>111</sup> Minn. Stat. §§ 45.027, subd. 7(a)(2), 82.58, subd. 4(d), 82.73, subd. 3(a), 82.75, subds. 5 and 11, 82.82, subd. 1(e) and (f), and 359.12 (2010).

<sup>112</sup> Minn. Stat. §§ 82.58, subd. 4, 82.65, subd. 1, and 82.82, subd. 1(e) (2010).

<sup>113</sup> Minn. Stat. §§ 45.027, subd. 7(a)(2), 58.12, subd. 1(b)(2)(iv), 82.82, subd. 1(b), and 359.12 (2010).

<sup>114</sup> Minn. Stat. §§ 45.027, subd. 7(a)(4), and 359.12 (2010).

<sup>115</sup> Minn. Stat. §§ 45.027, subd. 7(a)(3), 82.81, subd. 12(5) and (6), and 82.82, subd. 1(a) and (b) (2010).

<sup>116</sup> Minn. Stat. §§ 45.027, subd. 7(a)(2), 82.81, subds. 1 and 2, and 12(8) and (9), and 82.82, subd. 1(b) and (e) (2010).

13. The Department proved by a preponderance of the evidence that Respondents received a commission on the 1060 Rhode Island Avenue South knowing that they were not entitled to receive the commission compensation and, thus, engaged in deceptive and dishonest practices.<sup>117</sup>

14. Mr. Carver's misconduct demonstrates that he is untrustworthy and otherwise incompetent to act under the license granted by the Commissioner.<sup>118</sup>

15. Respondents failed to show cause why regulatory discipline should not be imposed against them.<sup>119</sup>

16. An Order imposing discipline against the Respondents is in the public interest.

Based on the Conclusions of Law, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RECOMMENDED that the Department impose appropriate discipline against Steven R. Carver and Carver & Associates Real Estate.

Dated: December 6, 2012

s/Eric L. Lipman

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ERIC L. LIPMAN  
Administrative Law Judge

Reported: Digital Recording

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<sup>117</sup> Minn. Stat. §§ 82.81, subd. 12(13), and 82.82, subd. 1(b) (2010).

<sup>118</sup> Minn. Stat. §§ 45.027, subd. 7(a)(2), 82.58, subd. 4(d), 82.73, subd. 3(a), 82.75, subds. 5 and 11, 82.82, subd. 1(e) and (f), and 359.12 (2010).

<sup>119</sup> Minn. Stat. §§ 45.027, subd. 7(b), and 82.82, subd. 5 (2010).

## NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Commerce (the Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Michael Rothman, Commissioner of the Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul MN 55101, (651) 296-2715 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

The poet Alexander Pope famously remarked: “He who tells a lie is not sensible of how great a task he undertakes; for he must be forced to invent twenty more to maintain that one.” This case makes clear how one lie, which spirals into twenty, can be very costly.

Mr. Carver’s deceptions were costly to his career, to the clients who trusted him and to the lenders who relied upon his work. To win real estate clients Carver lied;<sup>120</sup> to make money, he altered documents;<sup>121</sup> to obtain licenses, he dissembled;<sup>122</sup> to evade accountability for his actions he denied meaningful roles in his business enterprises;<sup>123</sup> and when pursued, he conjured up tales of floods<sup>124</sup> and clipper ships<sup>125</sup> that carried the details of his misconduct away. Every time that Mr. Carver was in a tight spot professionally, he marked it with a lie.

The hearing record also notes the place where Carver’s troubles began. The very first pledge that Mr. Carver broke is that he would help his clients obtain wealth in the same the way that his father earned money; earnestly and slowly. But Mr. Carver’s business practices didn’t resemble his father’s methods at all. Carver’s clients did not invest their own money in the properties they purchased; they did not live in the homes that they rented; and they did not screen tenants or actively safeguard the properties against loss. Because Mr. Carver should have known the differences between the two approaches, and disserved his clients by breaking the law, regulatory discipline is appropriate.

**E. L. L.**

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<sup>120</sup> See, e.g., Finding 70, *supra*.

<sup>121</sup> See, e.g., Findings 35 and 36, *supra*.

<sup>122</sup> See, Findings 98 through 102, *supra*.

<sup>123</sup> Ex. 73 at Track 1; Test. of M. Boyer; Test. of J. Kosmalski; Test. of W. Lemieux; Test. of J. Kollasch; Test. of J. Hassing.

<sup>124</sup> Respondents did not produce any documents related to the Lemieuxs’, Hassing’s, or Kollasch’s real estate transactions during discovery. Mr. Carver indicated that he did not have any documents in his possession regarding these transactions due to a flood in his garage. Ex. 71 at facsimile at 10 - 14; Test. of M. Boyer; Test. of S. Carver.

<sup>125</sup> After agreeing to meet with Department investigators, Carver left a voice mail message for the investigators asserting that he could not attend the meeting as he had already departed for a multi-year ocean voyage. He likewise told investigators that he had not lived at the home on Timberline Spur in Minnetonka for two years. At the time set for the meeting, Department investigators found Mr. Carver at his Minnetonka home, cleaning his swimming pool. See, Ex. 73 at Track 1; Test. of M. Boyer; Test. of J. Kosmalski; Test. of S. Carver.